

## **HALL & ASSOCIATES**

Suite 701  
1620 I Street, NW  
Washington, DC 20006-4033  
Telephone: (202) 463-1166 Web: <http://www.hall-associates.com> Fax: (202) 463-4207

Reply to E-mail:  
[ethomas@hall-associates.com](mailto:ethomas@hall-associates.com)

December 12, 2017

### **Via FOIA Online**

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460

### **RE: Freedom of Information Act Request for all Responsive Records identified in FOIA EPA-HQ-2016-006425 in full**

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To Whom This May Concern:

This is a request for public records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. Section 552, as implemented by the Environmental Protection Agency (“EPA”) at 40 C.F.R. Part 2.

### **Background**

On May 6, 2016, Hall & Associates (“H&A”) submitted a FOIA request to EPA for EPA HQ’s Nov. 19, 2013 Desk Statement and related documents (EPA-HQ-2016-006425). On July 18, 2016, EPA delivered the final response to this request, including a list of 35 responsive records (see attached). 28 of those records were withheld under the deliberative process privilege. On February 28, 2017 the D.C. Circuit Court in *Ctr. for Regulatory Reasonableness v. EPA*, 849 F.3d 453, 454 (D.C. Cir. 2017), held that “[b]eginning in 2013, EPA made statements indicating that it would not acquiesce in or follow the Eighth Circuit’s decision outside of that circuit.”

### **Request**

In light of the recent D.C. Circuit Court decision, this Request seeks all 35 documents included as responsive records for FOIA EPA-HQ-2016-006425 in full. The D.C. Circuit Court found that EPA rendered a non-acquiescence decision in 2013 and therefore, as none of these responsive documents predate 2013, they may not be classified as pre-decisional or deliberative and must be released in full.

\*\*\*

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed \$250.00. Please duplicate the records that are responsive to this request and send it to the undersigned at the above address. If the requested record is withheld based upon any asserted privilege, please identify the basis for the non-disclosure.

If you have any questions regarding this request, please do not hesitate to contact this office.

Respectfully,

/s/ Erin Thomas

Erin Thomas  
Hall & Associates  
1620 I St., NW  
Washington, DC 20006-4033  
(202) 463-1166  
ethomas@hall-associates.com



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUL 18 2016

OFFICE OF  
WATER

Mr. Adam Carlesco  
Hall & Associates  
Suite 701  
1620 I Street, NW  
Washington, D.C. 20006-4033

Re: Freedom of Information Act Request EPA-HQ-2016-006425

Dear Mr. Carlesco:

This is the final response to your May 6, 2016 Freedom of Information Act (FOIA) request seeking:

- A complete copy of the EPA Headquarters (HQ) Desk Statement cited in a December 5, 2013 Region VII email (or any subsequent version of this document or any other document prepared at EPA HQ containing a similar regulatory position); as well as any and all records transmitting or discussing the transmission of this Desk Statement (or any subsequent version of this document or any document prepared at EPA HQ containing a similar regulatory position) to any EPA Regional Offices.
- All records transmitting, referencing, or discussing the content and applicability of the referenced HQ Desk Statement (or any subsequent version of this document or any document prepared at EPA HQ containing a similar regulatory position) by EPA HQ and Regional Offices.
- All records developing and discussing this EPA HQ Desk Statement (or any subsequent version of this document or any other document prepared at EPA HQ containing a similar regulatory position), as well as any documents identifying all individuals involved in its development of such documents.
- Any additional documents (however titled or described) concerning how Regional Offices should address or discussing post-*Iowa League of Cities* permitting.

The EPA provided an initial production to your FOIA request in a June 24, 2016 letter. The June 24, 2016 letter included an itemized invoice for \$587.00, which is the cost of responding to the FOIA. If you have not done so already, please forward your check or money order, made payable to U.S. Environmental Protection Agency, within 30 days of the date of this response. Your check should refer to the FOIA number above and should be accompanied by the top portion of the enclosed Bill for Collection. Your prompt payment of the amount indicated will be appreciated.

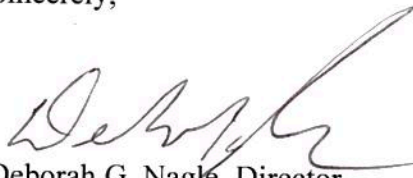
Enclosure A lists additional documents which are responsive to your request in EPA-HQ-2016-006425. We are unable to provide the following documents which have been determined to be exempt from mandatory disclosure by either the deliberative process privilege of 5 U.S.C. 552(b)(5) as pre-decisional, deliberative, and confidential or the under the attorney/client privilege of 5 U.S.C. 552(b)(5).

1. Attachment: Letter to ME CSO Related Bypass – to MEDEP 011414.docx dated January 14, 2014.
2. Attachment: Letter to ME CSO Related Bypass 011414.docx dated January 14, 2014.
3. Attachment: Letter to ME CSO Related Bypass -071713 – to OW.docx dated July 17, 2013.

You may appeal this response to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), FAX: (202) 566-2147, E-mail: [hq.foia@epa.gov](mailto:hq.foia@epa.gov). Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20004. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the FOIA number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Please contact Kevin Weiss at (202) 564-0742 if you have any questions regarding our response.

Sincerely,



Deborah G. Nagle, Director  
Water Permits Division

Enclosures



Enclosure A

**Responsive Records for FOIA EPA-HQ-2016-006425**

July 18, 2016

1. Email from Kevin Weiss to Richard Witt dated November 21, 2013. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.
2. Letter from Nancy Stoner to Tom Cochran dated April 2, 2014.
3. Email from Deborah Nagle to David Webster dated December 4, 2013. Portions of this document are withheld under the deliberative process privilege of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative.
4. Email from Mary Ellen Levine to Richard Witt dated February 20, 2014. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.
5. Email from Connie Bosma to Kevin Weiss dated January 14, 2014.
6. Email from James Vinch to Alan Morrissey dated October 2, 2014.
7. Email from Sylvia Horwitz to Kevin Weiss dated January 21, 2015. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.
8. Email from Glenn Curtis to John Dunn dated December 10, 2013.
9. Email from Mark Nuhfer to Chris Thomas dated November 22, 2013. Portions of this document are withheld under the deliberative process privilege of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative.
10. Email from Chris Thomas to James Giattina dated November 25, 2013.

11. Email from Kay Schwab to Paul Kaspar dated November 25, 2013. Portions of this document are withheld under the deliberative process privilege of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative.
12. Email from Kay Schwab to Michael Tilman dated November 25, 2013. Portions of this document are withheld under the deliberative process privilege of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative.
13. Email from John Wiemhoff to Rob Pepin dated November 25, 2013. Portions of this document are withheld under the deliberative process privilege of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative.
14. Email from Deane Bartlett to R3 3RC20 dated December 4, 2013. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.
15. Email from Mark Nuhfer to Chris Thomas dated February 27, 2014. Portions of this document are withheld under the deliberative process privilege of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative.
16. Email from Kevin Weiss to Kilty Baskin dated June 27, 2014.
17. Email from Kevin Weiss to Glenn Curtis dated March 26, 2014. Portions of this document are withheld under the deliberative process privilege of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative.
18. Letter from Clairton Municipal Authority to Jon Capacasa dated August 21, 2013.
19. Draft document entitled Agenda: NPDES Program Improvements for the 21<sup>st</sup> Century dated December 9-12, 2013. Portions of this document are withheld under the deliberative process privilege of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative.
20. Draft document. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.
21. Draft document entitled Draft Discussion Piece dated February 27, 2014. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5

U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.

22. Draft document entitled Draft National Municipal Enforcement Conference Agenda, dated October 29 and 30, 2014. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.
23. Draft document entitled Johnson County, KS Permit Proposal dated January 17, 2014. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.
24. Draft document entitled Johnson County, KS Permit Proposal dated January 22, 2014. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.
25. Draft document entitled MOU Between KS DHE and Lawrence, KS, undated. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.
26. Draft document, undated. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.
27. Draft document, undated. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.

28. Draft Talking Points dated December 11, 2013. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.
29. Draft document entitled Theoretical Question Regarding Limits for Facilities with Excess Flow Treatment Facilities – 01/29/14 - Updated 02/19/14 – JW. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.
30. Email from Mark Pollins to James Vinch dated January 15, 2014. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.
31. Email from Mark Pollins to James Vinch dated January 22, 2014. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.
32. Email from James Vinch to Loren Denton dated February 5, 2014. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.
33. Draft document entitled Iowa League Cities. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.
34. Email from James Vinch to Leslie Allen dated January 9, 2014. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.

35. Email from James Vinch to Mark Pollins dated January 24, 2014. Portions of this document are withheld under the deliberative process and attorney-client privileges of 5 U.S.C. § 552(b)(5). The internal document was predecisional and deliberative. In addition, the document included confidential communication between a client and its attorney relating to a legal matter for which the client has sought professional advice.



**Chairman**  
Perry Ohm

**Superintendent**  
Brian Secrest

**Vice Chairman**  
James Cerqua

**Clairton Municipal Authority**  
1 North State Street  
Clairton, PA 15025

**RECEIVED**  
EPA REGION III

**AUG 21 2013**

**Secretary**  
Delwyn Peterson

**Telephone (412)-233-3246**  
**Fax: (412) 233-3249**

NPDES PERMITS BRANCH  
(3WP41)  
**Engineer**  
VCH Engineers

**Treasurer**  
Raymond Glover

**Solicitor**  
Dodaro, Matta  
& Cambest, P.C.

**Assistant Secretary/  
Treasurer**  
Nick Nickolich

August 5, 2013

Jon Capacasa  
Director  
Water Protection Division  
U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103

RE: Request for Clarification on Region's Position Regarding Legality of Peak Flow Treatment Processes Under Bypass Rule

Dear Mr. Capacasa:

The Clairton Municipal Authority ("Clairton or Authority"), respectfully requests that the Region confirm that certain treatment plant designs and peak flow modes of process operation are allowable under existing federal rules. Given the substantial financial implications associated with this issue, as well the deadlines established in the Long-Term Control Plan (LTCP) and imposed in the NPDES Permit to reduce and eliminate combined sewer overflows (CSOs), the Region's prompt response to this inquiry is requested.

#### Background

Clairton operates a 6 MGD Sewage Treatment Plant that services approximately 39,000 users in south central Pennsylvania that contains roughly 45 miles of piping and six designated combined sewer overflow (CSO) points. EPA CSO Control Policy and LTCP require Clairton to modify its wastewater facilities to greatly reduce CSOs and greatly increase wet weather treatment capacity. As a means to comply with the LTCP, Clairton contemplated designing and operating the facility with a special peak flow processing approach that would be only be utilized when the influent to the plant surpassed the capacity of Clairton's biological treatment units. These peak flows would receive physical/chemical treatment and be recombined (or blended) with the other treated wastewaters in a manner that ensured the final effluent would be compliant with its NPDES permit limits.

However, when Clairton sought approval of this treatment plant design in 2010, it was specifically told that this blending design was illegal under federal law. Emails recently released by EPA under the Freedom of Information Act have confirmed how this occurred:

I actually talked to [DEP] about this and pretty much gave him our standing position about bypasses and blending. He told me that there's a facility in SW PA (Clairton?) (sic) that is proposing Actiflo treatment on bypassed sanitary flow during wet weather and blending back to portion of the wastestream that received full treatment. SW has denied that proposal and I told him we concur and would not approve a permit that authorized this.

See attached, Email from B. Trulear, EPA R3 to F.Cruz, E. MacKnight, D. Bartlett, EPA R3, Mar. 25, 2010. Heeding the advice of the Region, Clairton was informed by DEP that such cost effective peak flow processing approaches could not be approved. Consequently, Clairton was forced to initiate the design of a substantially more expensive approach to address CSO related flows. The increased cost was over \$6 million which is a considerable sum for the small, disadvantaged communities served by the Authority.

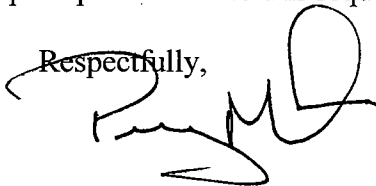
#### EPA's Blending Prohibition Held to be Procedurally and Substantively Unlawful

On March, 25, 2013, however, the Eighth Circuit Court of Appeals issued an opinion that emphatically rejected the position taken by EPA Region 3 in the aforementioned correspondence. See, *Iowa League of Cities ("the League") v. EPA*, No. 11-3412 (8th Cir. 2013). Specifically, the Court ruled that EPA's prohibition of wet weather treatment designs, which "blend" or "recombine" flows was "irreconcilable" with the bypass rule – 40 C.F.R. § 122.41(m) – and secondary treatment rule – 40 C.F.R. Part 133 and deviated from the Agency's historical interpretation of these rules. Given EPA's failure to formally adopt the revised rule interpretations, the Court vacated the blending prohibition on procedural grounds. Additionally, the Court ruled that EPA's blending prohibition, even if submitted through formal rulemaking, "exceeded EPA's statutory authority" under the Clean Water Act.

#### Request for Regulatory Clarification

The communities we serve cannot afford to waste their limited resources on unnecessary treatment facilities. Consequently, Clairton desires now to revise its proposed facility improvements and CSO reduction strategy to employ blending, as it had originally intended in 2010, before EPA informed DEP that the approach was not allowed under federal law. Given the obvious inconsistency between EPA Region 3's previous statements to DEP and the recent 8th Circuit ruling, Clairton seeks a prompt confirmation from EPA that a wet weather treatment design incorporating blending is permissible under the Clean Water Act. We thank you for your prompt attention to this request.

Respectfully,

A handwritten signature in black ink, appearing to be "R. M. Doyle", written over the word "Respectfully,".

cc: Senator Pat Toomey  
Congressman Mike Doyle  
Congressman Tim Murphy  
Senator James Brewster  
Representative Mark Gergely  
Representative Rick Saccone

**From:** [Weiss, Kevin](#)  
**To:** [Witt, Richard](#); [Levine, MaryEllen](#); [Denton, Loren](#); [Vinch, James](#)  
**Subject:** FW: EPA Position on Blending  
**Date:** Thursday, November 21, 2013 11:46:25 AM  
**Attachments:** [D0303JECOPY1342 SMTP via LDAP 11-21-2013 10-50-39.pdf](#)

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**From:** Trulear, Brian  
**Sent:** Thursday, November 21, 2013 11:34 AM  
**To:** Bosma, Connie; Weiss, Kevin  
**Cc:** Nagle, Deborah; McGuigan, David; Walker, Dana; Blanco-Gonzalez, Joel; Price-Fay, Michelle; Bartlett, Deane  
**Subject:** EPA Position on Blending

Connie/Kevin,

We are in receipt of the attached request from a municipality to provide them with our position on blending in light of the Iowa League of Cities decision. As the letter states, EPA Region 3 had previously stated that we did not approve of this scenario as part of the permitted treatment process. [REDACTED]  
[REDACTED]

Region 3 is being asked to formally express our position and we realize how important it is to have a unified Agency position. Please review the attached request and I ask for your guidance on how we should respond.

Thanks,

*Brian P. Trulear*

**Acting Chief**

**NPDES Permits Branch (3WP41)**

**US EPA Region 3**

**(215)814-5723**

From: [Nuhfer, Mark](#)  
To: [Thomas, Chris](#)  
Cc: [Campbell-Dunbar, Shawneille](#); [Danois, Gracy R.](#); [Farzaad, Marjan](#); [Horsey, Maurice](#); [Lambert, Wesley](#); [Olone, Dan](#); [Schwartz, Paul](#); [Able, Tony](#); [Kagey, Connie](#); [Espy, Cheryl](#); [Ghosh, Ben](#); [Fonzi, Gina](#); [Shell, Karrie-Jo](#); [Hyatt, Marshall](#); [Sampath, Sam](#); [Staples, Bridget](#); [Thomas, Alicia](#); [Tyler, Kip](#); [Buff, Virginia](#)  
Subject: Hot Issues Municipal and Industrial NPDES Section for Week of Nov 25-30  
Date: Friday, November 22, 2013 3:57:39 PM

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INTERNAL DELIBERATIVE DO NOT DISTRIBUTE OR RELEASE

## **Hot Issues Municipal and Industrial NPDES Section for Week of Nov 25-30**

For Senior Staff Meetings, etc.- latest information as of Friday afternoon

-  
**ARRA**

Nothing new to report

**Contact from Elected Officials**

Nothing new to report

-  
**Potential or Expected Press Stories**

Nothing new to report

**Potential or Expected Policy**

[REDACTED]

**Freedom of Information Act Requests of RA Interest**

Nothing new to report

**Community Engagement Meetings/Environmental Justice/Children's  
Environmental Health Updates**

Nothing new to report

**Coal Mining Issues Management Tracking- NPDES Mountain Top Mining**

NPDES Coal Mining AL:

[REDACTED]

NPDES Coal Mining KY:

Nothing new to report as of Nov 22. (Tyler).

Next Steps: NA

**NPDES Coal Mining KY- Permit Objections:**

Nothing new to report as of Nov 22. (Tyler).

[REDACTED]

**NPDES Coal Mining KY- General Permit:**

Nothing new to report as of Nov 22. (Tyler).

[REDACTED]

**NPDES Coal Mining KY- Petition to Withdraw authorization for KY's NPDES program:**

Nothing new to report as of Nov 22.

[REDACTED]

Next Steps: NA

**NPDES Coal Mining TN:**

[REDACTED]

**NPDES Coal Mining Other:**

Nothing new to report as of Nov 22 (Tyler).

Next Steps: NA

-

**Issues Management Tracking- Other**

**NPDES Permit Withdrawal AL:**

Nothing new to report as of Nov 22 (Nuhfer).

Next Steps: NA

**NPDES Permit Withdrawal TN:**

Nothing new to report as of Nov 22. (Sampath)

[REDACTED]

**FL NNC Implementation:**

Nothing new to report as of Nov 15 (Nuhfer).

Next Steps: NA

-

**Other Regional Hot Issues**

-

**1. Integrating Programs to Achieve Environmental Results**

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]





[REDACTED]	[REDACTED]	
[REDACTED]	[REDACTED]	

### 3. NPDES Permit Reviews

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	NA

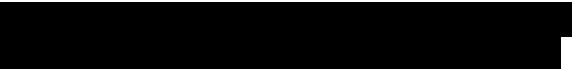
### NPDES PERMIT REVIEW TRACKING

[REDACTED]

[REDACTED]

[REDACTED]

Link to View/Edit the Spreadsheet:



-

**R4 NPDES Reference Library of Guidance and Policy Interpretations**

1.



**My Schedule**

**M**

9-10                    PCIB Mtg, 15c  
1-3                    Section Chief Team Meeting, 15c  
3-3:30                PCIB Manager Meeting

**T**

1-1:30                Offshore Oil and Gas Permit Discussion with HQ (tent)  
2:30-3                Meeting

**W**

9:30-10:30           MINS Section Meeting, 15c

**TH**

HAPPY THANKSGIVING!

**F**

Annual Leave

**From:** [Schwab, Kay](#)  
**To:** [Tillman, Michael](#); [Kaspar, Paul](#)  
**Subject:** FW: Desk Statement for Iowa League of Cities  
**Date:** Monday, November 25, 2013 9:35:54 AM

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Fyi from David below.....

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**From:** Gillespie, David  
**Sent:** Monday, November 25, 2013 8:16 AM  
**To:** Schwab, Kay  
**Cc:** Ryland, Renea  
**Subject:** RE: Desk Statement for Iowa League of Cities

[REDACTED]

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**From:** Schwab, Kay  
**Sent:** Monday, November 25, 2013 8:02 AM  
**To:** R6 6WQ-P; R6 6WQ-PO; R6 6WQ-PP  
**Cc:** Ryland, Renea; Gillespie, David  
**Subject:** FW: Desk Statement for Iowa League of Cities

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FYI ... Attached is EPA HQs "statement" on 8<sup>th</sup> Circuit "blending" decision [REDACTED]

[REDACTED]

[REDACTED]

**From:** Weiss, Kevin  
**Sent:** Friday, November 22, 2013 1:21 PM  
**To:** Webster, David; Anderson, Kate; Trulear, Brian; MacKnight, Evelyn; Thomas, Chris; Nuhfer, Mark; Pierard, Kevin; Wiemhoff, John; Kaspar, Paul; Schwab, Kay; Curtis, Glenn; Nix, Tanya; Dunn, John; Hosch, Claudia; Rathbone, Colleen; Sablad, Elizabeth; Smith, DavidW; Lidgard, Michael; Poulosom, Susan; Pitt, Brian; Josilo, Michelle  
**Cc:** Bosma, Connie  
**Subject:** Desk Statement for Iowa League of Cities

**From:** [Schwab, Kay](#)  
**To:** [Kaspar, Paul](#)  
**Subject:** RE: Desk Statement for Iowa League of Cities  
**Date:** Monday, November 25, 2013 8:41:05 AM

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[REDACTED]

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**From:** Kaspar, Paul  
**Sent:** Friday, November 22, 2013 3:23 PM  
**To:** Schwab, Kay  
**Subject:** FW: Desk Statement for Iowa League of Cities

[REDACTED]

Paul Kaspar  
Chief, Permits Oversight Section (6WQ-PO)  
NPDES Permits & TMDL Branch  
Water Quality Protection Division  
US. EPA - Region 6  
1445 Ross Avenue  
Dallas, TX 75202  
Office: 214.665.7459  
Fax: 214.665.2191  
Email: [kaspar.paul@epa.gov](mailto:kaspar.paul@epa.gov)

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**From:** Weiss, Kevin  
**Sent:** Friday, November 22, 2013 1:21 PM  
**To:** Webster, David; Anderson, Kate; Trulear, Brian; MacKnight, Evelyn; Thomas, Chris; Nuhfer, Mark; Pierard, Kevin; Wiemhoff, John; Kaspar, Paul; Schwab, Kay; Curtis, Glenn; Nix, Tanya; Dunn, John; Hosch, Claudia; Rathbone, Colleen; Sablad, Elizabeth; Smith, DavidW; Lidgard, Michael; Poulsom, Susan; Pitt, Brian; Josilo, Michelle  
**Cc:** Bosma, Connie  
**Subject:** Desk Statement for Iowa League of Cities



**From:** [Thomas, Chris](#)  
**To:** [Giattina, James](#); [Mundrick, Doug](#); [Diaz, Denisse](#)  
**Cc:** [Nuhfer, Mark](#); [Farzaad, Marjan](#)  
**Subject:** FW: Desk Statement for Iowa League of Cities  
**Date:** Monday, November 25, 2013 8:23:00 AM  
**Attachments:** [Desk Statement 11-19-13.docx](#)

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Blending and bypass court decision.

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**From:** Weiss, Kevin  
**Sent:** Friday, November 22, 2013 2:21 PM  
**To:** Webster, David; Anderson, Kate; Trulear, Brian; MacKnight, Evelyn; Thomas, Chris; Nuhfer, Mark; Pierard, Kevin; Wiemhoff, John; Kaspar, Paul; Schwab, Kay; Curtis, Glenn; Nix, Tanya; Dunn, John; Hosch, Claudia; Rathbone, Colleen; Sablad, Elizabeth; Smith, DavidW; Lidgard, Michael; Poulsom, Susan; Pitt, Brian; Josilo, Michelle  
**Cc:** Bosma, Connie  
**Subject:** Desk Statement for Iowa League of Cities

**From:** [Wiemhoff, John](#)  
**To:** [Pepin, Rob](#)  
**Bcc:** [Kuefler, Patrick](#)  
**Subject:** RE: Desk Statement for Iowa League of Cities  
**Date:** Monday, November 25, 2013 11:29:00 AM

---

First time I've seen something labeled like that.

[REDACTED]  
[REDACTED]  
John Wiemhoff  
Senior Environmental Engineer  
Wastewater Systems  
Water Division-NPDES Branch  
USEPA-Region 5  
WN-16J - # 16016  
77 West Jackson  
Chicago, IL 60604  
Phone: 312-353-8546; FAX: 312-582-5133  
wiemhoff.john@epa.gov  
CHMM #2944

---

**From:** Pepin, Rob  
**Sent:** Monday, November 25, 2013 7:54 AM  
**To:** Wiemhoff, John  
**Subject:** RE: Desk Statement for Iowa League of Cities

What is a desk statement?

---

**From:** Wiemhoff, John  
**Sent:** Friday, November 22, 2013 01:55 PM  
**To:** Prichard, Gary; Kuefler, Patrick  
**Cc:** Pepin, Rob; Pfeifer, David  
**Subject:** FW: Desk Statement for Iowa League of Cities

fyi

---

**From:** Weiss, Kevin  
**Sent:** Friday, November 22, 2013 1:21 PM  
**To:** Webster, David; Anderson, Kate; Trulear, Brian; MacKnight, Evelyn; Thomas, Chris; Nuhfer, Mark; Pierard, Kevin; Wiemhoff, John; Kaspar, Paul; Schwab, Kay; Curtis, Glenn; Nix, Tanya; Dunn, John; Hosch, Claudia; Rathbone, Colleen; Sablad, Elizabeth; Smith, DavidW; Lidgard, Michael; Poulson, Susan; Pitt, Brian; Josilo, Michelle  
**Cc:** Bosma, Connie  
**Subject:** Desk Statement for Iowa League of Cities

**From:** [Bartlett, Deane](#)  
**To:** [R3 3RC20](#)  
**Cc:** [Trulear, Brian](#)  
**Subject:** Tidbit from Bi-Monthly Wet Weather Call today  
**Date:** Wednesday, December 04, 2013 4:52:40 PM

---

- **Iowa League of Cities**

[REDACTED]

If you want more information from the call, see me.

***Deane***

Deane Bartlett  
Senior Assistant Regional Counsel  
USEPA Region III (3RC20)  
1650 Arch Street  
Philadelphia, PA 19103  
215/814-2776 (phone)  
215.814-2603(fax)

ATTENTION: This communication may contain privileged or confidential information. If you are not the intended recipient or if you have received this communication in error, please delete the copy that you have received and do not print, copy, retransmit, disseminate or otherwise use the information.

**From:** [Nagle, Deborah](#)  
**To:** [Webster, David](#); [Anderson, Kate](#); [Trulscar, Brian](#); [Thomas, Chris](#); [Nuhfer, Mark](#); [Pierard, Kevin](#); [Hosch, Claudia](#); [Curtis, Glenn](#); [Bathbone, Colleen](#); [Smith, DavidW](#); [Sablad, Elizabeth](#); [Lidgard, Michael](#); [Sawyers, Andrew](#); [Levine, MaryEllen](#); [Pollins, Mark](#); [Anderson, William](#); [Bosma, Connie](#); [Wedeman, Allison](#); [Lavery, Tim](#); [Brennan, Ross](#); [Zakrist, Marcus](#); [Fraser, Brian](#)  
**Cc:** [Erick, Sheila](#); [Rathemond, Norene](#); [Shapiro, Mike](#); [Fennema-Notestine, Nancy](#); [Giffin, Bonnie](#)  
**Subject:** The Chicago NPDES Branch Chief's Meeting - Final Agenda and Expectations  
**Date:** Wednesday, December 04, 2013 5:53:45 PM  
**Attachments:** [Chicago NPDES Strategy Meeting\\_HillAgenda.doc](#)  
[FPA 807 21 V131.doc](#)  
[NEW ULCC BROCHURE 2012.pdf](#)  
[ULCC Fact Sheet.pdf](#)  
[lmaec003.ema](#)

---

"The greatest danger in times of turbulence is not the turbulence; it is to act with yesterday's logic."

— Peter Drucker

**With the quote above in mind -- I would like you to come to Chicago having thought about these two strategic questions:**

- 1) How would you envision the NPDES program modernizing the way it does business over the next 5-10 years?
- 2) What three areas should we focus improvements to the program?

**Agenda and the way forward:** Attached is the agenda for our meeting in Chicago next week. Thank you for taking the time to speak with SRA facilitators Catherine Allen and Philipia Hillman last week. Your feedback (unattributed) helped shape the agenda. As you will see, Monday afternoon and Thursday morning we will discuss regional issues in our round robin format as well as specific program issues of mutual interest.

[REDACTED]

**Expectations:** I need you to think strategically — not in the weeds. I need you to be a leader — not a manager. I need you stretch — not stay in your comfort zone. But most of all, I need you to bring your passion for what you do to Chicago.

See you next week. I am excited. I hope you are too.

-Deborah

---

**Other Logistical considerations:**

- Tuesday night we have 5:30 reservations for pizza at Gino's East (521 South Dearborn). We hope everyone will be able to participate.
- I've attached two flyers for the Union League Club, as well as a copy of the hotel fact sheet we distributed earlier.
- The Region 5 conference room will have the usual comforts: flip charts, video conference capability, and a separate breakout room. Regrettably, Region 9 will not be able to attend, but the room will have audio-conference capability to allow David Smith and Elizabeth Sablad to call in.

\*\*\*\*\*  
Deborah G. Nagle, Director  
Water Permits Division  
MC 4203M  
1200 Pennsylvania Ave, NW  
Washington, DC 20460  
Tel: (202) 564-1185  
FAX: (202) 564-6392

**NPDES Program Improvements for the 21<sup>st</sup> Century  
Strategy and Priority Meeting  
December 9-12, 2013  
EPA Region 5  
77 W. Jackson Blvd., Chicago, IL**

**AGENDA**

---

**Meeting Purpose/Outcomes:**

**Purpose:** The NPDES Program leadership is meeting in Chicago to collectively design an approach to modernize the NPDES program to meet 21<sup>st</sup> century realities. The leadership will also discuss what FY15 strategic priorities will support near and long-term improvements toward a more efficient and effective NPDES Program.

**Outcomes:**

- Appreciation of the key drivers affecting our current realities and our future demands and possibilities
  - Shared 5-10 year vision for the NPDES Program
  - Clear strategic goals to guide program modernization efforts over the next 3-5 years
  - Initial outline of FY15 priorities based on strategic goals for NPDES program
  - Outline of specific next steps to move an NPDES Program strategy and priorities forward
- 

**Monday, December 9: Program Discussions**

**1:00pm – 5:00pm**

***Regional Round-Robin: Regions Share Issues of Mutual Interest***

*Regional NPDES Branch Chiefs - 15-20 minutes per Region*



**Tuesday, December 10: Full-Day Discussion of NPDES Program Strategy Development**

**8:30am – 5:00pm**

**MORNING**

***Welcome***

*Andrew Sawyers, OWM Office Director*

*Deborah Nagle, WPD Division Director*

**Purpose:** Set context and expectations for the strategic direction.

***Introductions, Expectations, Working Environment***



***Agenda and Interview Feedback***

Purpose: Facilitators review 2-day agenda and share themes from interviews.

***The Case for Modernizing the NPDES Program***

[REDACTED]

**AFTERNOON**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

***Adjourn***

**Wednesday, December 11: Full-Day Discussion of NPDES Strategy Action Planning**

Wednesday, December 11<sup>th</sup> 8:30am – 5:00pm

**MORNING**

[REDACTED]

[REDACTED]

[REDACTED]

**AFTERNOON**

[REDACTED]

***Next Steps and Wrap Up***  
***Adjourn***

**Thursday, December 12: Program Discussions**  
**8:30am to Noon**

***Iowa League of Cities Decision***  
*Connie Bosma, Chief, Municipal Branch (HQ)*

[REDACTED]

[REDACTED]

***Adjourn***

**From:** [Curtis, Glenn](#)  
**To:** [Dunn, John](#)  
**Subject:** Re: Draft Agenda R7 Water Director's Conference call December 11th 9-11 AM: Call in No: 866-299-3188 code = 913-551-7071  
**Date:** Tuesday, December 10, 2013 1:41:20 PM

---

Karen should lead. But if not ..sure. All of this , down the agenda, should move quick, as an update, not a lot of discussion. We can talk

---

**From:** Dunn, John  
**Sent:** Tuesday, December 10, 2013 10:58:55 AM  
**To:** Curtis, Glenn  
**Cc:** Jay, Michael  
**Subject:** FW: Draft Agenda R7 Water Director's Conference call December 11th 9-11 AM: Call in No: 866-299-3188 code = 913-551-7071

Glenn, Somehow you got missed on this one.

I will sit in for you. Do I just read the desk statement on 8<sup>th</sup> Circuit? Do want other things on the table? --JD

---

**From:** Mindrup, Mary  
**Sent:** Tuesday, December 10, 2013 9:26 AM  
**To:** Dunn, John  
**Subject:** FW: Draft Agenda R7 Water Director's Conference call December 11th 9-11 AM: Call in No: 866-299-3188 code = 913-551-7071

Mary A T Mindrup  
Chief, Drinking Water Management Branch  
Water, Wetlands, and Pesticides Division  
US Environmental Protection Agency Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219  
913-551-7431

---

**From:** Jay, Michael  
**Sent:** Friday, December 06, 2013 3:23 PM  
**To:** [mtate@kdheks.gov](mailto:mtate@kdheks.gov); [adam.schnieders@dnr.iowa.gov](mailto:adam.schnieders@dnr.iowa.gov); [shelli.grapp@dnr.iowa.gov](mailto:shelli.grapp@dnr.iowa.gov); [John.Madras@dnr.mo.gov](mailto:John.Madras@dnr.mo.gov); [chris.wieberg@dnr.mo.gov](mailto:chris.wieberg@dnr.mo.gov); [john.hoke@dnr.mo.gov](mailto:john.hoke@dnr.mo.gov); [pat.rice@nebraska.gov](mailto:pat.rice@nebraska.gov); [steve.goans@nebraska.gov](mailto:steve.goans@nebraska.gov); [marty.link@nebraska.gov](mailto:marty.link@nebraska.gov)  
**Cc:** Shields, Amy; Flournoy, Karen; Bowman, Janet; Thomas, Hattie; Huffman, Diane; Delashmit, John; Mindrup, Mary; Flournoy, Karen; Kovac, Steve; Green, Jamie; Nix, Tanya; Humphrey, Leslie  
**Subject:** Draft Agenda R7 Water Director's Conference call December 11th 9-11 AM: Call in No: 866-299-3188 code = 913-551-7071

All,



We put this together based on the feedback you provided to Glenn. Any more suggestions be sure to let us know, thanks !

### **EPA – Federal Update:**

1. EPA budget in general, what we know
2. The latest on 8<sup>th</sup> Circuit decision and EPAs next step. See HQ Desk Statement below

Iowa League of Cities v EPA, Desk Statement, November 19, 2013

The Eighth Circuit's interpretation in Iowa League of Cities v EPA of EPA's regulations relating to blending and bypass is legally binding within the Eighth Circuit. Outside of the Eighth Circuit, EPA will continue to work with States and communities with the goal of finding solutions that protect public health and the environment while recognizing economic constraints and feasibility concerns, consistent with the Agency's existing interpretation of the regulations.

3. EPA Draft 2014-2018 Strategic Plan Update
4. Waters of the US Rule Status Update

It was noted that earlier EPA had acknowledged that the WoUS guidance/rule would be an expansion of the current universe. Now the press (Energy Guardian) reports AA Stoner indicated the following:

*Stoner reiterated EPA's stance that the proposal will comply with Supreme Court rulings that required the agency to reduce the scope of waters subject to agency permitting. She said the plan, developed with the U.S. Army Corps of Engineers, "means that EPA's jurisdiction will only include the protection of the same waters that have historically been covered under the Clean Water Act for the past 40 years – in fact, it will be a smaller set of waters than before the Supreme Court decision,"*

5. What is the status of Water AA appointment? Any insight on Kopocis?
6. The latest Climate Change Initiative : EPA (read ahead <http://epa.gov/climatechange/impacts-adaptation/fed-programs/EPA-impl-plans.html>)

### **EPA and States Open Discussion:**

1. State Budgets Future Outlook

How much do states rely on SRF Admin \$? What would be the plan if the House-published CWSRF cut of 83% and PWSRF cut of 62%; or the President's 20% and 7.5% cuts, respectively, took place?

**From:** [Vinch, James](#)  
**To:** ["allen.leslie@doj.gov"](mailto:allen.leslie@doj.gov)  
**Subject:** Draft Partial Outline  
**Date:** Thursday, January 09, 2014 9:34:57 AM  
**Attachments:** [Iowa League 12.15.13.docx](#)

---

Leslie,

Here is what I have so far:

[REDACTED]

Jim Vinch  
Attorney  
Water Enforcement Division  
US Environmental Protection Agency  
1200 Pennsylvania Ave NW  
Washington DC 20460  
tel: (202) 564-1256  
fax: (202) 564-0024

■

**From:** [Bosma, Connie](#)  
**To:** [Weiss, Kevin](#); [Billah, Mohammed](#); [Witt, Richard](#); [Horwitz, Sylvia](#)  
**Subject:** RE: Letter on ME CSO Related Bypass - to MEDEP 011414.docx  
**Date:** Tuesday, January 14, 2014 12:50:12 PM

---

I thought we were going to give Andrew and Nancy and Steve an opportunity to review.

---

**From:** Weiss, Kevin  
**Sent:** Tuesday, January 14, 2014 12:21 PM  
**To:** Bosma, Connie; Billah, Mohammed; Witt, Richard; Horwitz, Sylvia  
**Subject:** FW: Letter on ME CSO Related Bypass - to MEDEP 011414.docx

FYI – here is what Region 1 sent to Maine

---

**From:** Webster, David  
**Sent:** Tuesday, January 14, 2014 11:41 AM  
**To:** Brian Kavanah  
**Cc:** Weiss, Kevin; Pitt, Brian; Wagner, Michael  
**Subject:** Letter on ME CSO Related Bypass - to MEDEP 011414.docx

Brian,

Here is a revised version of your draft letter on CSO-related bypass permit conditions. Let me know if you have questions.

David Webster

**From:** [Denton, Loren](#)  
**To:** [Theis, Joseph](#); [Vinch, James](#)  
**Subject:** FW: Iowa League of Cities  
**Date:** Wednesday, January 15, 2014 9:36:22 AM

---

FYI

---

**From:** Pollins, Mark  
**Sent:** Tuesday, January 14, 2014 11:02 AM  
**To:** Chester, Steven; Denton, Loren  
**Subject:** Re: Iowa League of Cities

We spoke with them just yesterday and talked with Susan today. I believe we are on with you at our next general.

---

**From:** Chester, Steven  
**Sent:** Tuesday, January 14, 2014 10:56:48 AM  
**To:** Pollins, Mark; Denton, Loren  
**Subject:** Iowa League of Cities

Mark and Loren,  
Cynthia asked me if you are ready to talk Iowa League of Cities with OW. [REDACTED]

[REDACTED]  
[REDACTED]

Steve

## Johnson County, KS Permit Proposal

January 17, 2014

- Johnson County, KS is planning on building a 74 MGD peak wet weather auxiliary treatment facility at its Tomahawk WWTP, a facility served by separate sanitary sewers.
- Kansas is in the 10<sup>th</sup> Circuit for the Court of Appeals.
- The County has had initial discussions with the State, Region 7 and OWM staff regarding the facility.

- [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
  - [REDACTED]
    - [REDACTED]
  - [REDACTED]
    - [REDACTED]
    - [REDACTED]
    - [REDACTED]
    - [REDACTED]
    - [REDACTED]
- [REDACTED]
  - [REDACTED]
- [REDACTED]
  - [REDACTED]
- [REDACTED]
  - [REDACTED]

- Johnson County has recently issued a request for proposal. The County, State and Region 7 have requested EPA HQ concurrence with this approach at this time.

**From:** [Horwitz, Sylvia](#)  
**To:** [Weiss, Kevin](#); [Kramer, Kim](#); [Billah, Mohammed](#); [Anderson, Kate](#); [Stephansen, Stanley](#); [King, Carol](#)  
**Subject:** RE: NJ Permit Issue.  
**Date:** Wednesday, January 21, 2015 11:45:27 AM

---

*Attorney-Client Privileged*

I spoke to Mary Ellen about this today [REDACTED]  
[REDACTED].

Sylvia Horwitz  
Office of General Counsel  
Water Law Office  
WJC North 7353H  
Phone: 202-564-5511

---

**From:** Weiss, Kevin  
**Sent:** Wednesday, January 21, 2015 11:11 AM  
**To:** Kramer, Kim; Billah, Mohammed; Anderson, Kate; Stephansen, Stanley; King, Carol; Horwitz, Sylvia  
**Subject:** RE: NJ Permit Issue.

Kim:

Thanks for your edits. I had some suggestions on language. [REDACTED]  
[REDACTED]  
[REDACTED]

Thanks

Kevin

---

**From:** Kramer, Kim  
**Sent:** Tuesday, January 20, 2015 4:00 PM  
**To:** Billah, Mohammed; Anderson, Kate; Stephansen, Stanley; King, Carol; Horwitz, Sylvia; Weiss, Kevin  
**Subject:** RE: NJ Permit Issue.

Hi all.

Attached are my comments on the one-pager that Kevin sent out last week.

Thanks

*Kim Kramer*

Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway, 16th Fl  
New York, NY 10007  
(212) 637-3238

---

**From:** Billah, Mohammed

**Sent:** Tuesday, January 20, 2015 12:48 PM

**To:** Anderson, Kate; Stephansen, Stanley; King, Carol; Horwitz, Sylvia; Weiss, Kevin; Kramer, Kim

**Subject:** NJ Permit Issue.

Following decision has been made during the conference call today.

- Send me your comment (cc Kevin) on the document Kevin send out last Friday
- We will be talking to NJDEP tomorrow as scheduled
- [REDACTED]
- OW/OWM will brief the management ASAP, and finalize the document.
- EPA HQ and R2 will meet next week again to finalize the document before sending out to NJDEP
- Kevin and Sylvia will find out the regulatory reference to answer Q.2

Thanks

Mohammed Billah  
Environmental Engineer  
Office of Wastewater Management  
Water Permit Division  
Phone # (202) 564-2228

Draft

## Johnson County, KS Permit

January 22, 2014

- Johnson County, KS is planning on building a 74 MGD peak wet weather auxiliary treatment facility at its Tomahawk WWTP, a facility served by separate sanitary sewers.
- Kansas is in the 10<sup>th</sup> Circuit for the Court of Appeals.
- The County has had initial discussions with the State, Region 7 and OWM staff regarding the facility.
- [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
    - [REDACTED]
    - [REDACTED]
    - [REDACTED]
  - [REDACTED]
    - [REDACTED]
    - [REDACTED]
    - [REDACTED]
    - [REDACTED]
    - [REDACTED]
    - [REDACTED]
- The Region believes that Johnson County has a strong CMOM type program that includes a strong I/I component and is a good candidate for the approach.
- OWM believes this approach is reasonable and provides greater public health protection than blending without treatment.
- Johnson County has recently issued a request for proposal. The County, State and Region 7 have requested EPA HQ views concerning this approach.



**From:** [Pollins, Mark](#)  
**To:** [Vinch, James](#); [Denton, Loren](#)  
**Cc:** [Theis, Joseph](#)  
**Subject:** Re: Johnson County permit  
**Date:** Wednesday, January 22, 2014 10:21:02 AM

---

I agree with jim's assessment.

---

**From:** Vinch, James  
**Sent:** Wednesday, January 22, 2014 9:44:40 AM  
**To:** Denton, Loren  
**Cc:** Pollins, Mark; Theis, Joseph  
**Subject:** RE: Johnson County permit

Loren,

[REDACTED]

Jim Vinch  
Attorney  
Water Enforcement Division  
US Environmental Protection Agency  
1200 Pennsylvania Ave NW  
Washington DC 20460  
tel: (202) 564-1256  
fax: (202) 564-0024

---

**From:** Weiss, Kevin  
**Sent:** Friday, January 17, 2014 1:44 PM  
**To:** Denton, Loren; Vinch, James  
**Cc:** Pollins, Mark; Bosma, Connie  
**Subject:** Johnson County permit

Loren/Jim:

[REDACTED] The County has issued a request for proposals on the project, and has asked EPA for an indication that they are headed in the right direction on this before they invest more on side stream treatment. Can you take a look at the attached summary and let me know if you have any questions or comments?

Thanks

Kevin

**From:** [Vinch, James](#)  
**To:** [Pollins, Mark](#); [Theis, Joseph](#); [Denton, Loren](#)  
**Subject:** FW: Johnson County permit  
**Date:** Friday, January 24, 2014 10:25:07 AM  
**Attachments:** [Johnson County summary 1-22-14.docx](#)

---

I need to get back to Kevin on this. Have we decided how we want to respond? [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

**From:** Weiss, Kevin  
**Sent:** Wednesday, January 22, 2014 12:32 PM  
**To:** Weiss, Kevin; Denton, Loren; Vinch, James  
**Cc:** Pollins, Mark; Bosma, Connie  
**Subject:** RE: Johnson County permit

We updated the summary to respond to clarify issues Region 7 raised. How does it look?

Kevin

---

**From:** Weiss, Kevin  
**Sent:** Friday, January 17, 2014 1:44 PM  
**To:** Denton, Loren; Vinch, James  
**Cc:** Pollins, Mark; Bosma, Connie  
**Subject:** Johnson County permit

Loren/Jim:

[REDACTED]

[REDACTED] The County has issued a request for proposals on the project, and has asked EPA for an indication that they are headed in the right direction on this before they invest more on side stream treatment. Can you take a look at the attached summary and let me know if you have any questions or comments?

Thanks

Kevin

**From:** [Vinch, James](#)  
**To:** [Denton, Loren](#); [Theis, Joseph](#); [Pollins, Mark](#)  
**Subject:** RE: Strategy for responding to Iowa League of Cities  
**Date:** Wednesday, February 05, 2014 11:58:10 AM

---

How should we go about responding to Kevin? [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Jim Vinch  
Attorney  
Water Enforcement Division  
US Environmental Protection Agency  
1200 Pennsylvania Ave NW  
Washington DC 20460  
tel: (202) 564-1256  
fax: (202) 564-0024

---

**From:** Denton, Loren  
**Sent:** Wednesday, February 05, 2014 11:50 AM  
**To:** Theis, Joseph; Pollins, Mark; Vinch, James  
**Subject:** FW: Strategy for responding to Iowa League of Cities

FYI

---

**From:** Weiss, Kevin  
**Sent:** Wednesday, February 05, 2014 11:48 AM  
**To:** Pollins, Mark; Denton, Loren  
**Subject:** Strategy for responding to Iowa League of Cities

Mark/Loren:

Have you gotten any feedback from Susan or Cynthia on the draft strategy?

Thanks

Kevin

## **Theoretical Question Regarding Limits for Facilities with Excess Flow Treatment Facilities – 01/29/14 - Updated 02/19/14 - JW**

**Scenario #1:**

[REDACTED]

[REDACTED]

[REDACTED]

**Scenario #2:**

[REDACTED]

[REDACTED]

[REDACTED]

**Discussion:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Questions:**

[REDACTED]

[REDACTED]

[REDACTED]

---

[REDACTED]

## **Draft Discussion Piece Regarding Strategy for Responding to Iowa League of Cities**

February 27, 2014

Direction to take inside 8<sup>th</sup> Circuit: Permits for POTWs that blend must:

- Have a bypass provision that is at least as stringent as EPA's regulations at 40 CFR 122.41(m),
- Clearly identify the treatment train that will be used during dry and wet weather,
- Will not have internal permit limitations (unless end-of-pipe effluent limits are impracticable),
- Require monitoring to yield data that is representative of the monitored activity (see 122.48(b)) (permits should clearly specify end-of-pipe compliance monitoring during wet weather),
- Provide percent removal requirements according to the secondary treatment regulations, and
- Meet water quality standards.

Direction to take outside 8<sup>th</sup> Circuit:

[REDACTED]

[REDACTED]

EPA would hold a workshop with public health and engineering experts to ask questions about the public health implications of blending:

- [REDACTED]
- The workshop would be facilitated by a professional facilitator.
- Purpose is not to seek consensus but to solicit individual views – so it is not a FACA.

Depending on the outcome of the public health workshop, we could:

- [REDACTED]

○ [REDACTED].

The next step depends on the recommendations. [REDACTED]

Communicating our Strategy: [REDACTED]  
[REDACTED]



**From:** [Nuhfer, Mark](#)  
**To:** [Thomas, Chris](#)  
**Cc:** [Buff, Virginia](#); [Diaz, Denisse](#); [Horsey, Maurice](#)  
**Subject:** 8th Circuit Blending Desk Statement  
**Date:** Thursday, February 27, 2014 2:16:23 PM  
**Attachments:** [Desk Statement 11-19-13.docx](#)

---

In case you want to have this for the meeting with Aqualaw next week

---

**From:** Nuhfer, Mark  
**Sent:** Monday, February 24, 2014 2:24 PM  
**To:** Schwartz, Paul  
**Subject:** RE: Meeting Forward Notification: Prebrief for Chris: POTW Region IV Meeting with EPA Management

Agree. Did you ever see this desk statement from Kevin Weiss in OWM? [REDACTED]  
[REDACTED]

---

**From:** Schwartz, Paul  
**Sent:** Monday, February 24, 2014 2:22 PM  
**To:** Nuhfer, Mark  
**Subject:** RE: Meeting Forward Notification: Prebrief for Chris: POTW Region IV Meeting with EPA Management

[REDACTED] [REDACTED]  
[REDACTED]

---

**From:** Nuhfer, Mark  
**Sent:** Monday, February 24, 2014 12:35 PM  
**To:** Schwartz, Paul  
**Subject:** RE: Meeting Forward Notification: Prebrief for Chris: POTW Region IV Meeting with EPA Management

Thanks. We won't really be talking about enforcement issues with Chris but if Bill is working on some of the highlighted issues that is great that he can join us.

---

**From:** Microsoft Outlook **On Behalf Of** Schwartz, Paul  
**Sent:** Monday, February 24, 2014 9:38 AM  
**To:** Nuhfer, Mark  
**Subject:** Meeting Forward Notification: Prebrief for Chris: POTW Region IV Meeting with EPA Management

## Your meeting was forwarded

[Schwartz, Paul](#) has forwarded your meeting request to additional recipients.

### Meeting

Prebrief for Chris: POTW Region IV Meeting with EPA Management

### Meeting Time

Thursday, February 27, 2014 1:00 PM-2:00 PM.

**Recipients**

[Bush, William](#)

All times listed are in the following time zone: (UTC-05:00) Eastern Time (US & Canada)

---

Sent by Microsoft Exchange Server 2013

**From:** [Weiss, Kevin](#)  
**To:** [Curtis, Glenn](#); [Matthews, Mark](#); [Dunn, John](#)  
**Subject:** RE: Assoc. of Missouri Cleanwater Agencies - Meeting Responses  
**Date:** Wednesday, March 26, 2014 12:08:02 PM

---

Glenn:

For clarity, you may want to include:

The Iowa League of Cities decision did not vacate the bypass regulation at 40 C.F.R. §122.41. The bypass regulation rule was reviewed and upheld by the U.S Court of Appeals for the D.C. Circuit in *NRDC Inc. v. US EPA*, 822 F.2d 104, 126 (D.C. Cir. 1987).

Good luck  
Kevin

---

**From:** Curtis, Glenn  
**Sent:** Wednesday, March 26, 2014 11:36 AM  
**To:** Matthews, Mark; Dunn, John; Weiss, Kevin  
**Subject:** Assoc. of Missouri Cleanwater Agencies - Meeting Responses

Hey guys - Give me a last read. I am going forward the blending inside the 8<sup>th</sup> circuit to my BC peer group

The message below will go to John Madras, Missouri Department of Natural Resources Water Chief

John – find EPS’s response to a few of the issues raised at the meeting we had with the Association of Missouri Cleanwater Agencies. I would be happy to further discuss these responses/related issues and for you to forward this to the group. If you would prefer that EPA forward this to the group, let me know.

Thanks

### **Blending? - Inside the 8<sup>th</sup> Circuit**

In regard to wet weather operations at waste water treatment facilities inside the 8<sup>th</sup> Circuit, the following would apply.

#### Bypass:

All permits must contain language as stringent as 122.41(m). This includes the definition of bypass at 122.41(m)(1) “Bypass means the intentional diversion of waste streams from any portion of a treatment facility.” [40 CFR Part 122.4(m)]

All NPDES permits should continue to abide by these standard Bypass conditions as presented in the Federal Regulations.

#### Not a Bypass:

[REDACTED]

**Eliminating Percent Removal as a limit in NPDES permits**

Percent Removal for POTW secondary treatment is a regulatory requirement - found at 40 CFR 133.102 (a)(3) for percent removal of BOD and at 40 CFR 133.102 (b)(3) for TSS. [The requirement was put into the regulations so that a facility might not meet their limits through dilution with fresh water, which can have big implications for systems with I&I issues.]

**EPA’s Drinking Water Unregulated Contaminant Monitoring Rule**

[REDACTED]



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

APR - 2 2014

OFFICE OF WATER

Mr. Tom Cochran  
The United States Conference on Mayors  
1620 Eye Street, NW  
Washington, D.C. 20006

Dear Mr. Cochran:

Thank you for your November 26, 2013, letter to Administrator McCarthy. In your letter, you raised concerns about how the Environmental Protection Agency is responding to the decision in *Iowa League of Cities v. EPA* (711 F.3d 844 (8<sup>th</sup> Cir. 2013)). In addition, you indicated that you believe that there is no legal basis for EPA to assert that the decision does not apply nationwide and request that the EPA apply the *Iowa League of Cities* decision uniformly across the country.

In the *Iowa League of Cities* decision, the Eighth Circuit reviewed two EPA letters regarding two subjects under the Clean Water Act. The first area addressed in the decision was the EPA's policy view that bacteria mixing zones "should not be permitted" in waters designated for primary contact recreation. The second area addressed the issue of blending and the specific question of whether a facility that uses a physical/ chemical treatment process, such as ACTIFLO, to treat flows that are diverted around biological treatment units during wet weather events is subject to a "no feasible alternatives" demonstration under the bypass provision at 40 CFR 122.41(m). The court determined that the letters constituted legislative rules and vacated the letter's "rules" because they had been promulgated without following notice and comment procedures required under the Administrative Procedure Act.

While not necessary to its holding to vacate the letters as legislative rules, the court also stated that the EPA's statement in the blending letter "severely restricts the use of 'ACTIFLO systems that do not include a biological component' because the EPA does not 'consider[] [them] to be secondary treatment units' . . . If a POTW designs a secondary treatment process that routes a portion of the incoming flow through a unit that uses non-biological technology disfavored by the EPA, then this will be viewed as a prohibited bypass, regardless of whether the end of pipe output ultimately meets the secondary treatment regulations." 711 F.3d at 876. The court stated that "the September 2011 letter applies effluent limitations to a facility's internal secondary treatment processes, rather than at the end of the pipe." *Id.* at 876. Finally the court stated that "the blending rule clearly exceeds the EPA's statutory authority and little would be gained by postponing a decision on the merits." *Id.* at 877.

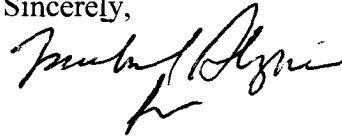
The Eighth Circuit's decision applies as binding precedent in the Eighth Circuit. The court's decision, however, did not and could not have vacated the bypass regulation at 40 C.F.R. §122.41. The bypass regulation itself was promulgated in 1984 (94 Fed. Reg. 37,990 (Sept 26, 1984)) and was subject to the exclusive jurisdiction review provision of section 509(b) of the Clean Water Act after its date of

promulgation. That rule was reviewed and upheld by the U.S Court of Appeals for the D.C. Circuit in *NRDC Inc. v. US EPA*, 822 F.2d 104, 126 (D.C. Cir. 1987). The D.C. Circuit found that “[t]he agency’s adoption of a bypass regulation which incorporates two broad and sensible exceptions . . . is, in our view, reasonable and therefore lawful.” The Eighth Circuit vacated only the letters at issue in the case.

The EPA shares with you a desire to protect human health and the environment while recognizing economic constraints and feasibility concerns. To that end, the EPA is planning to hold a forum with public health experts to ask questions about the public health implications of various bypass and blending scenarios during wet weather events. The EPA believes that this public health forum will provide valuable information on how to address discharges from POTWs that, during certain wet weather events, are diverted around biological treatment units. We expect to hold this workshop in the summer of 2014.

If you have any questions, please contact Andrew Sawyers, Director of the Office of Wastewater Management, at 202-564-0748.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy K. Stoner", with a stylized flourish at the end.

Nancy K Stoner  
Acting Assistant Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

APR - 2 2014

OFFICE OF WATER

Mr. Clarence E. Anthony  
National League of Cities  
1301 Pennsylvania Avenue  
Washington, D.C. 20004

Dear Mr. Anthony:

Thank you for your November 26, 2013, letter to Administrator McCarthy. In your letter, you raised concerns about how the Environmental Protection Agency is responding to the decision in *Iowa League of Cities v. EPA* (711 F.3d 844 (8<sup>th</sup> Cir. 2013)). In addition, you indicated that you believe that there is no legal basis for EPA to assert that the decision does not apply nationwide and request that the EPA apply the *Iowa League of Cities* decision uniformly across the country.

In the *Iowa League of Cities* decision, the Eighth Circuit reviewed two EPA letters regarding two subjects under the Clean Water Act. The first area addressed in the decision was the EPA's policy view that bacteria mixing zones "should not be permitted" in waters designated for primary contact recreation. The second area addressed the issue of blending and the specific question of whether a facility that uses a physical/ chemical treatment process, such as ACTIFLO, to treat flows that are diverted around biological treatment units during wet weather events is subject to a "no feasible alternatives" demonstration under the bypass provision at 40 CFR 122.41(m). The court determined that the letters constituted legislative rules and vacated the letter's "rules" because they had been promulgated without following notice and comment procedures required under the Administrative Procedure Act.

While not necessary to its holding to vacate the letters as legislative rules, the court also stated that the EPA's statement in the blending letter "severely restricts the use of 'ACTIFLO systems that do not include a biological component' because the EPA does not 'consider[] [them] to be secondary treatment units' . . . If a POTW designs a secondary treatment process that routes a portion of the incoming flow through a unit that uses non-biological technology disfavored by the EPA, then this will be viewed as a prohibited bypass, regardless of whether the end of pipe output ultimately meets the secondary treatment regulations." 711 F.3d at 876. The court stated that "the September 2011 letter applies effluent limitations to a facility's internal secondary treatment processes, rather than at the end of the pipe." *Id.* at 876. Finally the court stated that "the blending rule clearly exceeds the EPA's statutory authority and little would be gained by postponing a decision on the merits." *Id.* at 877.

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If you have any questions, please contact Andrew Sawyers, Director of the Office of Wastewater Management, at 202-564-0748.

Sincerely,

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Nancy K Stoner  
Acting Assistant Administrator





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

APR - 2 2014

OFFICE OF WATER

Mr. Matthew Chase  
National Association of Development Organizations  
400 North Capitol Street, NW  
Washington, D.C. 20001

Dear Mr. Chase:

Thank you for your November 26, 2013, letter to Administrator McCarthy. In your letter, you raised concerns about how the Environmental Protection Agency is responding to the decision in *Iowa League of Cities v. EPA* (711 F.3d 844 (8<sup>th</sup> Cir. 2013)). In addition, you indicated that you believe that there is no legal basis for EPA to assert that the decision does not apply nationwide and request that the EPA apply the *Iowa League of Cities* decision uniformly across the country.

In the *Iowa League of Cities* decision, the Eighth Circuit reviewed two EPA letters regarding two subjects under the Clean Water Act. The first area addressed in the decision was the EPA's policy view that bacteria mixing zones "should not be permitted" in waters designated for primary contact recreation. The second area addressed the issue of blending and the specific question of whether a facility that uses a physical/ chemical treatment process, such as ACTIFLO, to treat flows that are diverted around biological treatment units during wet weather events is subject to a "no feasible alternatives" demonstration under the bypass provision at 40 CFR 122.41(m). The court determined that the letters constituted legislative rules and vacated the letter's "rules" because they had been promulgated without following notice and comment procedures required under the Administrative Procedure Act.

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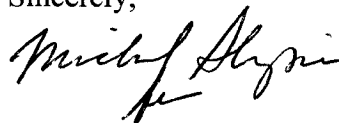
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If you have any questions, please contact Andrew Sawyers, Director of the Office of Wastewater Management, at 202-564-0748.

Sincerely,

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Nancy K Stoner  
Acting Assistant Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

APR - 2 2014

OFFICE OF WATER

Mr. Chuck Thompson  
International Municipal Lawyers Association  
7910 Woodmont Avenue  
Bethesda, Maryland 20814

Dear Mr. Thompson:

Thank you for your November 26, 2013, letter to Administrator McCarthy. In your letter, you raised concerns about how the Environmental Protection Agency is responding to the decision in *Iowa League of Cities v. EPA* (711 F.3d 844 (8<sup>th</sup> Cir. 2013)). In addition, you indicated that you believe that there is no legal basis for EPA to assert that the decision does not apply nationwide and request that the EPA apply the *Iowa League of Cities* decision uniformly across the country.

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Nancy K Stoner  
Acting Assistant Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

APR - 2 2014

OFFICE OF WATER

Mr. Ken Kirk  
National Association of Clean Water Agencies  
1816 Jefferson Place, NW  
Washington, D.C. 20036-2505

Dear Mr. Kirk:

Thank you for your November 26, 2013, letter to Administrator McCarthy. In your letter, you raised concerns about how the Environmental Protection Agency is responding to the decision in *Iowa League of Cities v. EPA* (711 F.3d 844 (8<sup>th</sup> Cir. 2013)). In addition, you indicated that you believe that there is no legal basis for EPA to assert that the decision does not apply nationwide and request that the EPA apply the *Iowa League of Cities* decision uniformly across the country.

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Sincerely,

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Nancy K Stoner  
Acting Assistant Administrator

**From:** [Weiss, Kevin](#)  
**To:** [Baskin, Kilty](#); [Kaspar, Paul](#)  
**Cc:** [Molina, Rudy](#)  
**Subject:** RE: EPA's Blending Policy  
**Date:** Friday, June 27, 2014 3:08:43 PM  
**Attachments:** [Desk Statement 11-19-13.docx](#)

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Kilty:

Thanks for the email. We have not updated or finalized the 2005 draft policy. Some quasi-recent events:

- In November, 2013, we developed this desk statement
  
- We held a experts forum on the potential public health impacts of blending on June 19 and 20
  
- We have been working with Region 7 on the best way to address a facility with an Actiflo unit that provides wet weather treatment.

Hope this helps

Kevin

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**From:** Baskin, Kilty  
**Sent:** Friday, June 27, 2014 2:33 PM  
**To:** Weiss, Kevin; Kaspar, Paul  
**Cc:** Molina, Rudy  
**Subject:** EPA's Blending Policy

Hello Kevin,

I'm not certain if you're the POC regarding EPA's proposed blending policy. In the past EPA Region 6 has been coordinating with our state counterparts in addressing wet-weather flows within their facilities and how to implement the conditions of the blending policy. One of our state counterparts, inquired of an update regarding the draft policy. Can you provide a status? We haven't heard anything recently.

Thanks for your assistance.

Kilty Baskin

State Coordinator

Permits Oversight Section (6WQ-PO)

Phone: (214) 665-7500

Email: [baskin.kilty@epa.gov](mailto:baskin.kilty@epa.gov)



**From:** [Vinch, James](#)  
**To:** [Morrissey, Alan](#); [Rosenberg, Alex](#); [Tien, Alysia](#); [Helwig, Amanda](#); [Clark, Amy](#); [Porter, Amy](#); [Cherry, Andrew](#); [Dinsmore, Andrew](#); [Seligman, Andrew](#); [Crossland, Andy](#); [Leiby, Anne](#); [Petruska, Anthony](#); [Vantil, Barbara](#); [Bahk, Benjamin](#); [Ammons, Brad](#); [King, Carol](#); [Lupton, Jane](#); [Peters, Carol](#); [Hermann, Caroline](#); [Carbone, Chad](#); [Cherup, Lisa \(ENRD\)](#); [Rose, Cheryl](#); [Saporita, Chris](#); [Alvarez, Christine](#); [Kloss, Christopher](#); [Thurmon, Clarke](#); [Weber, Courtney](#); [Vanlerberghe, Daren](#); [Allnutt, David](#); [Gwisdalla, David](#); [Bartlett, Deane](#); [Dart, Denny](#); [Gomes, Diane](#); [Mundrick, Doug](#); [McKenna, Douglas](#); [DeMaria, Eva](#); [Chase, Felicia](#); [Prichard, Gary](#); [Harding, George](#); [Snyder, Gina](#); [Phillips, Ginny](#); [Gonzalez, Eduardo](#); [Zimny, James](#); [Harvill, Jana](#); [Kopf, Jeff](#); [Davison, Jenny](#); [Day, Joanna](#); [Bruno, Jodi](#); [Melcher, John](#); [Moody, John](#); [Moody, Jonathan](#); [Hilton, Joy \(Palmer\)](#); [Burgess, Karen](#); [Greenberg, Ken](#); [Weiss, Kevin](#); [Karlson, Kristine](#); [Gaugler, Larry](#); [Hotham, Leonard](#); [Leslie Allen](#); [leslie.allen@usdoj.gov](mailto:leslie.allen@usdoj.gov); [Trakis, Lisa](#); [Denton, Loren](#); [Reynolds, Lori](#); [Magnan, Eric](#); [Magnan, Eric](#); [Monson, Mahri](#); [Levine, MaryEllen](#); [Bagley, Melissa](#); [Wagner, Michael](#); [Michelle Moustakas](#); [Mike Fedak](#); [Billah, Mohammed](#); [Lantner, Murray](#); [Cantello, Nicole](#); [Gleason, Patricia](#); [Miller, Patricia G.](#); [Kuefler, Patrick](#); [Feinmark, Phyllis](#); [Douglas, Racquel](#); [Searfoss, Renee](#); [Witt, Richard](#); [Rivera-Ocasio, Evelyn](#); [Grandinetti, Robert](#); [Ireland, Sean](#); [Kupchan, Simma](#); [Shamet, Stefania](#); [Maslowski, Steven](#); [Bruce, Susan](#); [Perdomo, Susan](#); [Poulsom, Susan](#); [Horwitz, Sylvia](#); [Valdis Aistars](#); [Bush, William](#); [Jones, William](#); [Roundtree, Yvette](#); [Price-Fay, Michelle](#)  
**Cc:** [Pollins, Mark](#); [Theis, Joseph](#)  
**Subject:** Information about National Municipal Enforcement Meeting  
**Date:** Thursday, October 02, 2014 9:10:17 AM  
**Attachments:** [Logistics.docx](#)  
[List of restaurants.pdf](#)  
[Final Muni Conference Agenda 10.2.14.docx](#)

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Hello National Municipal Enforcement Meeting Participants:

I am attaching several documents for the upcoming national stormwater enforcement meeting scheduled for Oct. 28 – 30 in Chicago. These include:

- Agenda with meeting locations (building and rooms) (Please note: there may be additional speakers added to the agenda but the schedule and topics are firm)
- Street maps including public transportation (CTA) maps and directions from the hotel to meeting locations.
- List of restaurants

Conference Code for TAs: I do not have a conference code yet but the paperwork has been submitted and I'll forward the code as soon as I get it.

Hotel: Information on the hotel can be found in the September 3rd email below. Please note that you should make your reservations by **Oct. 5** to ensure the government rate.

Video conferencing: Yes, we plan to videocast the meeting. More information to come.

One final note - I don't have the name of everyone who will be attending the meeting, so please pass this on to any of your coworkers who will be there but are not on this distribution list.

Please let me know if you have any questions.

Jim Vinch  
Attorney  
Water Enforcement Division  
Office of Civil Enforcement  
US Environmental Protection Agency  
1200 Pennsylvania Ave NW (Mail Code 2243-A)

Washington DC 20460  
tel: (202) 564-1256

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**From:** Vinch, James

**Sent:** Wednesday, September 03, 2014 11:32 AM

**To:** Morrissey, Alan; Rosenberg, Alex; Tien, Alysia; Helwig, Amanda; Clark, Amy; Porter, Amy; Cherry, Andrew; Dinsmore, Andrew; Seligman, Andrew; Crossland, Andy; Leiby, Anne; Petruska, Anthony; Vantil, Barbara; Bahk, Benjamin; Ammons, Brad; King, Carol; Peters, Carol; Hermann, Caroline; Carbone, Chad; Cherup, Lisa (ENRD); Rose, Cheryl; Saporita, Chris; Alvarez, Christine; Kloss, Christopher; Thurmon, Clarke; Weber, Courtney; Vanlerberghe, Daren; Allnutt, David; Gwisdalla, David; Bartlett, Deane; Dart, Denny; Gomes, Diane; Mundrick, Doug; McKenna, Douglas; DeMaria, Eva; Chase, Felicia; Prichard, Gary; Harding, George; Snyder, Gina; Phillips, Ginny; Gonzalez, Eduardo; Vinch, James; Zimny, James; Harvill, Jana; Kopf, Jeff; Davison, Jenny; Day, Joanna; Bruno, Jodi; Melcher, John; Moody, John; Moody, Jonathan; Hilton, Joy (Palmer); Burgess, Karen; Greenberg, Ken; Weiss, Kevin; Karlson, Kristine; Gaugler, Larry; Hotham, Leonard; Leslie Allen; leslie.allen@usdoj.gov.; Trakis, Lisa; Denton, Loren; Reynolds, Lori; Magnan, Eric; Magnan, Eric; Monson, Mahri; Levine, MaryEllen; Bagley, Melissa; Wagner, Michael; Michelle Moustakas; Mike Fedak; Billah, Mohammed; Lantner, Murray; Cantello, Nicole; Gleason, Patricia; Miller, Patricia G.; Kuefler, Patrick; Feinmark, Phyllis; Douglas, Racquel; Searfoss, Renee; Witt, Richard; Rivera-Ocasio, Evelyn; Grandinetti, Robert; Ireland, Sean; Kupchan, Simma; Shamet, Stefania; Maslowski, Steven; Bruce, Susan; Perdomo, Susan; Poulosom, Susan; Horwitz, Sylvia; Valdis Aistars; Bush, William; Jones, William; Roundtree, Yvette

**Cc:** Bruce, Susan

**Subject:** National Municipal Enforcement Meeting

By now, most of you know that we are planning to hold a national meeting for the municipal enforcement program in Region 5 in Chicago during the week of October 27, 2014. We are still working on the agenda for the meeting, which we hope to finalize in the next two weeks. Until then, I thought I would share a few more details about the meeting in case you would like to start making travel arrangements.

First, let me briefly mention the dates. The municipal portion of the meeting will begin on the afternoon of October 29th (start time approximately 1 pm). However, most of you are aware that EPA stormwater enforcement program will also be holding their national meeting in Chicago on October 27-28, 2014, immediately preceding the municipal enforcement meeting. For a period in between the stormwater session and the municipal session there will be a combined session of both groups where we will address MS4 enforcement. The MS4 combined session will run from approximately 8:00 am October 29 through noon on that same date. The muni portion of the meeting will begin immediately following the lunch break on Wednesday October 29<sup>th</sup>. You are welcome to attend any or all of the MS4 portion of the meeting in addition to the core municipal session. It is anticipated that the municipal meeting will conclude around 4 pm on October 30<sup>th</sup>.

We are planning to hold a group dinner on Wednesday night October 29<sup>th</sup> at 6 pm.

We have confirmed a block of rooms at the Hotel Allegro in Chicago for the Oct. 27-30 for national municipal enforcement meeting. The hotel is located at 171 W. Randolph Street. The rate is \$194/night and the cutoff date for ensuring this rate is Oct. 5. We reserved a block of 35 rooms.

To make your reservations, you can call 1.800.KIMPTON or the hotel directly at 312.236.0123. Please let them know that you are attending the EPA ENFORCEMENT MEETING.

For those unable to attend in person, we plan to have the entire conference accessible to the regions via video conference.

When the agenda is finalized, we will distribute it to the group. In the meantime, if you have any questions, please feel free to contact me.

# National Municipal Enforcement Conference Agenda

October 29 and 30, 2014

Region 5, Chicago, Illinois

**Wednesday October 29, 2014: Morning session in Dirksen Building, room 200 (second floor, next to cafeteria)**

## Joint Session on MS4s

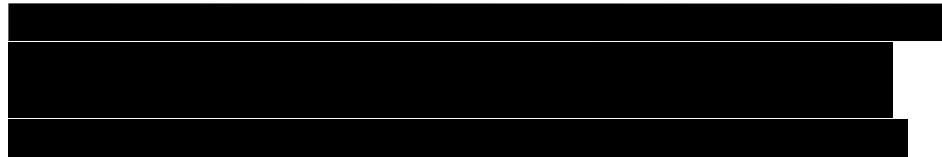
8:15 am-

### INTEGRATED PLANNING/FINANCIAL CAPABILITY ANALYSIS

9:15 am

Andy Crossland, OECA

Loren Denton, OECA



9:15 am-

### GREEN INFRASTRUCTURE

10:15 am

Loren Denton, OECA

Jonathan Moody, Region 5

Bob Newport, Region 5



10:15am –

### Break

10:30 am

10: 30 am –

### COMPLIANCE MONITORING STRATEGIES/NEXT GEN COMPLIANCE

11:15 am

James Zimny, OECA



11:15 am-

### CLIMATE RESILIENCY

12:00 pm

Loren Denton, OECA

Bill Bush, Region 4



[REDACTED]

12:00 pm –  
12:30

**Lunch**

**Afternoon session in Metcalfe Building, Regional Conference Center's Illinois Room (12th floor, south of the elevators)**

12:30 pm-  
12:45 pm

**WELCOME, OVERVIEW OF MUNICIPAL SESSION**

Mark Pollins, OECA

12:45 pm-  
1:45 pm

**IOWA LEAGUE OF CITIES**

Jim Vinch, OECA

Kevin Weiss, OWM

Patricia Miller, Region 7

**Objective:** Discussion of Eighth Circuit's Iowa League of Cities decision [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

1:45 pm-  
2:00 pm

**Break**

2:00 pm-  
3:00 pm

**POST CONSENT DECREE LODGING ISSUES**

Jane Lupton, Region 5

[REDACTED]  
[REDACTED]  
[REDACTED]

3:00 pm-  
5:00 pm

**REGIONAL ROUNDTABLE**

All Regions

**Objective:** Regional presentation of municipal issues important to them. Discuss recent trends in municipal enforcement and identify common issues across regions that may require HQ coordination.

6:00 pm

**Group Dinner at Greek Islands, 200 S. Halstead Ave., Chicago, IL**

**Thursday October 30, 2014: Session in Metcalfe Building, Regional Conference Center's Illinois Room (12th floor, south of the elevators)**

8:30 am

**Morning session**

**PUBLIC PARTICIPATION IN REVIEWING CD SUBMITTALS**

Bill Bush, Region 4

Loren Denton, OECA

[REDACTED]

**BUILDING AN EFFECTIVE MUNICIPAL ENFORCEMENT CASE**

James Zimny, OECA

Jodi Bruno, Region 7

Brad Ammons, Region 4

[REDACTED]

12:00 –

12:30 pm

**Lunch**

12:30 pm

**Afternoon Session**

**USING ADMINISTRATIVE COMPLIANCE ORDERS AFTER SACKETT**

Jim Vinch, OECA

Dean Maraldo, Region 5

Laurie Kermish, Region 9

[REDACTED]

[REDACTED]

[REDACTED]

**CURRENT PRACTICE ISSUES IN MUNICIPAL ENFORCEMENT CASES: Supplemental  
Environmental Projects, Use of Stipulated Penalties, Partial Consent Decrees and  
Use of Section 504 in Municipal Enforcement Cases**  
Joanna Citron Day-OECA

[REDACTED]

4:00 pm

**Conference Wrap-up**

In August, 2014, the Center for Regulatory Reasonableness represented by the law firm of Hall & Associates filed a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit. *The Center for Regulatory Reasonableness v. U.S. EPA*, D.C. Cir. No. 14-1150. The case challenges two letters signed by Acting EPA Administrator for Water Nancy Stoner responding to inquiries sent by a coalition of municipal organizations concerning the decision of the Eighth Circuit in *Iowa League of Cities v. EPA*, 711 F.3d 844 (8th Cir. 2013). The *Iowa League* case concerned letters EPA had sent responding to United States Senator Charles Grassley's inquiries concerning certain Clean Water Act regulatory requirements governing water treatment processes at POTWs.

In the *Iowa League* case, over EPA's objection, the Eighth Circuit had asserted jurisdiction to review the letters, concluding that the Agency had, in providing its views to a sitting Senator, "promulgat[ed]" an "effluent or other limitation" within the meaning of the appellate review provision of the CWA, section 509(b)(1)(E), 33 U.S.C. § 1369(b)(1)(E). On the merits, the court of appeals vacated and remanded EPA's letters on the procedural ground that the views the Agency expressed represented legislative rules not preceded by notice and an opportunity for public comment and on the substantive ground that one aspect of EPA's policy articulated in the letters exceeded EPA's statutory authority under the CWA.

In this most recent case, EPA filed a motion asking the D.C. Circuit to dismiss the *Center* case on the grounds that the D.C. Circuit lacked jurisdiction to review. We asserted that the threshold jurisdictional question before the court was whether EPA took an action in "promulgating any effluent or other limitation" – the statutory basis for the court's jurisdiction under section 509(b)(1)(e) of the CWA 33 U.S.C. § 1369(b)(1)(E). We asserted that EPA, through the letters in question, had not promulgated anything.

The court declined to act on EPA's motion, instead choosing to carry the motion along with the case for consideration after briefing is completed. On January 26, 2015, we filed the record in this case. The Center's opening brief is 03/09/2015, EPA's brief on 05/08/2015 and the Center's reply on 06/05/2015.



If asked about EPA's response to Iowa League of Cities:

- EPA received a letter dated November 26, 2013 from the U.S. Conference of Mayors, the National League of Cities and other organizations requesting clarification of the Agency's position on the *Iowa League of Cities* decision in the 8<sup>th</sup> Circuit Court of Appeals. EPA is currently reviewing the letter and will provide a response in the near future.

### **Background of Iowa League of Cities Decision**

- In Iowa League of Cities v. EPA (March 25, 2013) the Eighth Circuit Court of Appeals:

(1) vacated portions of two letters that EPA sent to Senator Grassley in response to his questions about blending and mixing zones because the letters constituted legislative rules that were promulgated without notice and comment rulemaking in violation of the APA; and

2) held that EPA exceeded its statutory authority insofar as it imposes secondary treatment regulations on flows within treatment facilities (e.g. apply effluent limitations to the discharge of flows from one internal treatment unit to another), [REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]

1. Iowa League of Cities held that EPA does not have the statutory authority to prohibit “blending” as a violation of the bypass rule, 40 C.F.R. § 122.41(m) as long as the discharges from the POTW comply with the effluent limits in its NPDES permit. This decision will be applied within the Eighth Circuit. [REDACTED]

2. The Clean Water Act requires that publically owned treatment works treat all wastewater streams using the technology-based standard of “secondary treatment as defined by the Administrator pursuant to section 1314(d)(1) of this title.” 33 U.S.C. § 1311(b)(1)(B). Section 1314(a) of the CWA requires the Administrator to promulgate regulations concerning the “degree of effluent reduction attainable through the application of secondary treatment” focusing on the “amounts of constituents and chemical, physical and biological characteristics of pollutants.” Although EPA lacks the authority to prescribe specific treatment technologies necessary to meet the secondary treatment standard, *NRDC v. EPA*, 822 F.2d 1276 (9<sup>th</sup> Cir. 1989), EPA has specified a minimum level of effluent reduction required to meet secondary treatment.

3. The secondary treatment regulations, 40 C.F.R. Part 133, sets forth the “level of effluent quality attainable through the application of secondary treatment or equivalent technology.” 40 C.F.R. § 133.100. In general, the secondary treatment regulation requires that the minimum level of effluent quality attainable by secondary treatment requires the removal of the pollutants BOD, suspended solids and pH to the certain numeric levels of concentration as specified in the rule.<sup>i</sup> 40 C.F.R. § 133.102(a)-(c). As long as a POTW’s end-of-the-pipe discharges satisfy these numeric standards, then the POTW is arguably satisfying the secondary treatment requirement. While the secondary treatment standard does not prescribe that any particular treatment technology be employed, it does identify the type of technology required in order for a treatment system to be considered “equivalent to secondary treatment.”

4. [REDACTED] In 1981, Congress amended the CWA to allow POTWs to use certain existing technologies as “equivalent to secondary treatment” even though the discharges from the use of these technologies could not meet the effluent limits specified in 40 C.F.R. § 133.103.102(a)-(c). The legislative history [REDACTED]

33 U.S.C. § 1314(d)(4). See H.R. Rep. No. 97-30, 97<sup>th</sup> Cong., 1<sup>st</sup> Sess. 34-35, 73 (1981).

In its regulations, EPA defined “facilities eligible for treatment equivalent to secondary treatment” as those facilities that use “a trickling filter or waste stabilization pond as the principal process” and are unable to meet the removal requirements for BOD and suspended solids as set forth in 40 C.F.R. § 133.103 and that “provide significant **biological treatment** of municipal wastewater.”

**\*\*Another interesting point:** In the FR preamble finalizing the equivalent to secondary rule, EPA responded to a comment that some of these “equivalent facilities” have been able to meet secondary treatment standards by by-passing flows rather than treating all flows. The commenter stated that the effluent limitations under the equivalent to secondary rule should assume that the facility is treating all of the previously by-passed flows. EPA agreed that the effluent limitations must be “adjusted to account for those attainable when the by-passed flows are treated.”

**5. Bypass rule:** The bypass rule, 40 C.F.R. § 122.41(m), prohibits the intentional diversion of waste streams from any portion of a treatment facility unless the discharger can demonstrate that the bypass was “unavoidable to prevent loss of life, personal injury or severe property damage” or there were “no feasible alternatives” to the bypass. 40 C.F.R. § 122.41(m)(4). One of the primary purposes of the bypass rule is to require that “permittees operate control equipment at all times, thus obtaining the maximum pollutant reductions consistent with technology-based requirements.” 49 Fed.Reg. 38,036 (Sept. 26, 1984). The bypass rule is designed to “ensure that users properly operate and maintain their treatment facilities . . . [pursuant to applicable] technology-based standards.” 53 Fed. Reg. 40,562, 40,609 (Oct.17, 1988).

In *National Resources Defense Council v. EPA*, 822 F.2d 104 (D.C. Cir. 1987) industry groups argued that the bypass rule does not require the continuous treatment of wastewater through the technology-based treatment process specified in an NPDES permit as long as the effluent limitations in the permit were met. In cases where effluent limits are expressed as monthly

averages (as is the case with the effluent limits based on secondary treatment), turning the treatment technology off for several days during the month would still allow a facility to meet its monthly average limit as long as it treated all the wastewater on the remaining days. The court held that, although Congress did not intend to impose a “one size fits all” technology standard:

[w]e do not agree....that “on-off” regulation constitutes a choice of treatment technologies. Since that sort of option does nothing to further the goal of exploring diverse treatment technologies, we are unpersuaded that the “on-off” decision is the sort of technological choice Congress intended to leave entirely to the discharger.

*Id.* at 123. Furthermore, the court reasoned,

[i]n the context of a statute which seeks the elimination of pollution, it is difficult to believe that Congress *intended* that dischargers be entitled to shut off their treatment facilities and “coast” simply because they were momentarily not in danger of violating effluent limitations. . . . In view if the Act’s ambitious policies, we cannot say that the Act requires EPA to allow bypasses which are not provided for in the permit and which are unnecessary for maintenance purposes or to avoid harm to life or property. The statute’s goals are hardly fostered by allowing dischargers to shut off their systems at will whenever they are in compliance with the requirements represented by the effluent limitations.

*Id.* at 123-24.

[REDACTED]

In addition, the court recognized that the bypass rule performed another valuable function in the CWA regulatory scheme. By insisting on full treatment of wastestreams through the technology-based treatment process, EPA is using the bypass regulation “as a means of minimizing the discharge of indirectly regulated pollutants.” It is not always feasible or technologically possible to set an effluent limit for every pollutant that the agency has reason to regulate. For instance, some pollutants cannot be detected simply or in a cost effective manner. Therefore, in these situations EPA frequently establish effluent limits for certain pollutants which serve as “‘indicators’ of the probable level of the unregulated pollutants because the model treatment technology removes both.” *Id.* at 125. The court upheld this “practice of indirectly regulating pollutants without promulgation of specific effluent limits under section 304...[as] unsurprising.”

[REDACTED] The preamble to the publication of the final bypass rule states that “the restriction on bypasses where permit limits are

being met is necessary for several reasons. EPA's effluent limitations guidelines and standards-setting process are predicted [sic] upon the efficient operation and maintenance of removal systems. A number of effluent limitations guidelines and standards upon which NPDES permits are based do not contain specific limitations for all of the pollutants of concern. . . . The data available to EPA show that effective control of these pollutants can be obtained by controlling the discharge of [other] pollutants" specifically regulated in the NPDES permit. . . . If bypass of treatment equipment is allowed, there is no assurance that these [unregulated] pollutants will be controlled even though those specifically limited still meet permit limitations." *Id.* at 38,037.

The preamble continues:

Similarly, permit writers who establish permit limitations. . . generally evaluate the relevant treatment system and often decide that limitations on all pollutants of concern are not necessary. This may be because. . it is determined that the limitations on only some of the pollutants will provide adequate control of remaining pollutants so long as treatment equipment is properly operated and maintained. This eliminates the need to impose numerous pollutant limitations and corresponding monitoring requirements which are burdensome and costly to the permittee . . . . If bypasses if treatment equipment are allowed, it is possible that all pollutants of concern will not receive the level of control anticipated in the establishment of the permit limitations.

*Id.*

[REDACTED]

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<sup>i</sup> The secondary treatment regulation defines secondary treatment as attaining an average effluent for both BOD and suspended solids of 30 mg/l in a period of 30 consecutive days, and average effluent quality of 45 mg/l for the same pollutants in a period of 7 consecutive days, and 85 percent removal of the same pollutants in a period of 30 consecutive days. The effluent levels for pH must be maintained between 6.0 and 9.0 unless certain demonstrations are made.

<sup>ii</sup>

[REDACTED]

**Memorandum of Understanding Between  
The Kansas Department of Health and Environment and the City of Lawrence, Kansas  
Lawrence, Kansas Integrated Wastewater Plan**

**Purpose**

The purpose of this Memorandum of Understanding (MOU) between the Kansas Department of Health and Environment (KDHE) and the City of Lawrence, Kansas (Lawrence) is to acknowledge and agree upon an Integrated Municipal Stormwater and Wastewater Planning document for wastewater and stormwater system improvements with implementation timelines.

**Background**

On June 5, 2012, EPA published its *Integrated Municipal Stormwater and Wastewater Planning Approach Framework* (Framework)<sup>1</sup>. The stated purpose of the Framework is to “assist municipalities on their critical paths to achieving the human health and water quality objectives of the Clean Water Act by identifying efficiencies in implementing requirements that arise from distinct wastewater and stormwater programs, including how to best prioritize capital investments.”

The City of Lawrence has recently completed a *Wastewater Facility Master Plan* (Plan)<sup>2</sup> looking at future wastewater needs, prioritizing the needs, and projecting the cost for funding the needed system-wide improvements (Attachment 1). The Plan contains all components required for an “Integrated Plan” and is hereby adopted as the initial Integrated Plan and the core document for future modifications.

**Crosswalk**

To more easily identify the portions of the Plan that tie in to the Framework elements, the following table and descriptive text identify and *crosswalk* those elements.

Framework Element	Plan Link/Other Documentation	Comment
1. A description of the water quality, human health and regulatory issues to be addressed in the plan.	1. SSO Potential – PG 2-29 2. Nutrient reduction – Wakarusa Plant – Pg. 3-11 3. Nutrient Reduction – KSR Plant – Pg. 3-12	The nutrient reduction facility permit for the new Wakarusa treatment plant is already permitted, therefore, not much discussion of the need for nutrient reduction.
2. A description of existing wastewater and/or stormwater systems under consideration and summary information describing the systems’ current performance.	1. Technical Memo 2 – Sewer System – Pg. 2-1 2. Technical Memo 3 – Wastewater Treatment – Pg 3-1	

<sup>1</sup> *Integrated Municipal Stormwater and Wastewater Planning Approach Framework* (accessed April 4, 2013); available from [http://www.epa.gov/npdes/pubs/integrated\\_planning\\_framework.pdf](http://www.epa.gov/npdes/pubs/integrated_planning_framework.pdf).

<sup>2</sup> *Report on Wastewater Facilities Master Plan City of Lawrence, KS, Project 54793, 2012* (accessed April 4, 2013); available from <http://lawrenceks.org/assets/utilities/ReportFinal.pdf>.

Framework Element	Plan Link/Other Documentation	Comment
3. A process which opens and maintains channels of communication with relevant community stakeholders in order to give full consideration of the views of others in the planning process and during implementation of the plan.	See attached web notices regarding the Plan. (Attachments 2 and 3)	The city tailors stakeholder involvement to fit the project through announcements of public hearings using the city's website, direct mailing, or other types of venues.
4. A process for identifying, evaluating, and selecting alternatives and proposing implementation schedules.	Technical Memo 5 – Pg 5-1	Technical Memo 5 lays out the project prioritization, costs, and schedules. [An abbreviated schedule is included as Attachment 1 to this document]
5. As the projects identified in the plan are being implemented, a process for evaluating the performance of projects identified in a plan, which may include evaluation of monitoring data, information developed by pilot studies and other studies and other relevant information.	NPDES Permits	Permits will carry a provision for a review of progress and performance each year. The permits will also carry reopener clauses to address unanticipated issues requiring modification of the implementation schedule.
6. Improvements to the Plan	NPDES Permits	The NPDES permits will carry provisions for evaluating and modifying the plan at each five year renewal.

### Implementation

While the Framework focused on enforceable schedules in permits or enforcement orders/decrees, the Framework allows for incorporation of an Integrated Plan into an NPDES permit. The Lawrence Integrated Plan will be referenced in both the Lawrence Kansas River and Wakarusa NPDES permits upon re-issuance. Further, the permits will contain reopener provisions to amend the Plan, as well as provisions for Lawrence to provide annual updates on Plan progress made during the current year and planned for the next year.

### Agreement

KDHE and the City of Lawrence enter into this understanding to provide City of Lawrence a degree of certainty that the Kansas Department of Health and Environment agrees with the intent of Lawrence to pursue wastewater upgrades to the City of Lawrence sewer system and its wastewater treatment plants.

Agreement to and compliance with this MOU does not remove any obligations of the City of Lawrence to comply with the Clean Water Act (CWA), nor does it lower existing regulatory or

permitting standards, but rather recognizes the flexibilities in the CWA for the appropriate sequencing and scheduling of work.

Attachment 1 only reflects the parties' best estimate for projects and start of design or construction. The parties recognize that specific projects and projected start dates may change as circumstances change (growth, regulatory, reliability, etc.), if this is the case and significant changes are needed; the parties agree to amend the plan.

### **Entry into Force**

The Memorandum of Understanding will enter into force upon signature by the Parties.

### **Duration of the MOU**

This Memorandum of Understanding is signed for an initial period of 20 years and may be renewed or amended by mutual agreement between the Parties.

### **Termination**

Each Party shall have the right to terminate the Memorandum of Understanding by giving six months' written notice in writing to the other Party at any time. If the Memorandum of Understanding is terminated by either Party, steps shall be taken to ensure that the termination does not affect any prior obligation, project or activity already in progress.

### **Signatures**

\_\_\_\_\_

XXXXX

Kansas Department of Health and Environment

Date: \_\_\_\_\_

\_\_\_\_\_

XXXX

City of Lawrence, Kansas

Date: \_\_\_\_\_



**Attachment 1**

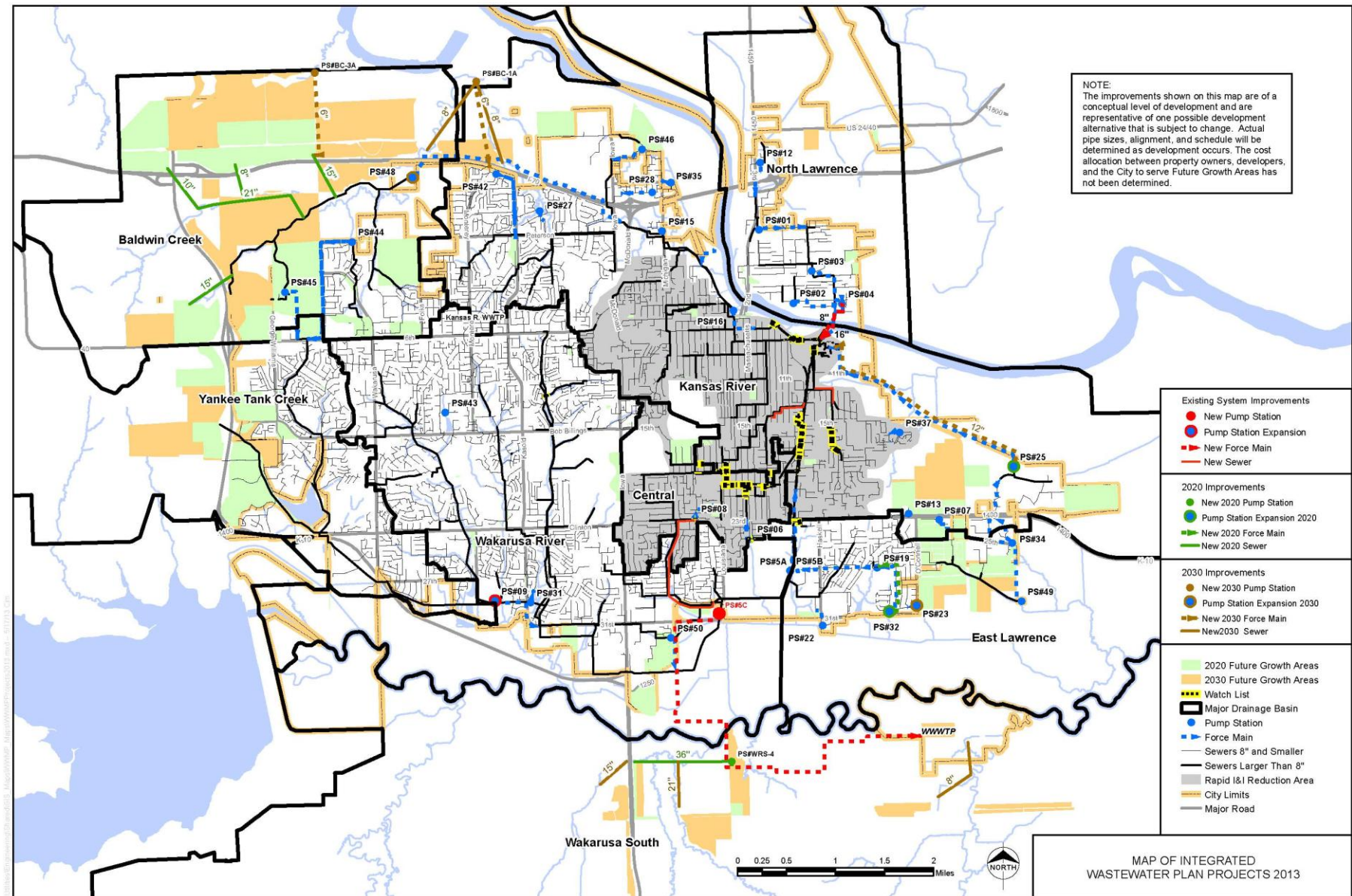
Item		Reason for Project	2012 Cost Opinion	Currently Projected Start Date *
<b><u>1</u></b>	<b>Collection System**</b>	-		
a	PS 9 expansion to 14 MG	1	\$ 2,300,000	2020
b	PS 32 expansion to 1.7 MG, 8" force main	1	\$ 800,000	2020
c	PS 25 expansion to 4 MG, Add 3rd Pump	1	\$ 150,000	2019
d	PS 25 expansion to 6 MG, parallel 12" force main	1	\$ 1,440,000	2030
e	21" gravity sewer to eliminate PS 8	3	\$ 3,500,000	2017
f	KR-5B 12" relief sewer	3	\$ 800,000	2017
g	KR-6B 21" relief sewer	3	\$ 700,000	2018
h	PS 23 expansion to 0.1 MGD	1, 3	\$ 200,000	2022
i	PS 48 expansion to 6.4 MGD	1	\$ 300,000	2024
<b><u>j</u></b>	<b>PS 04 Redundant Forcemain</b>	<b>2, 3</b>	<b>\$ 1,600,000</b>	<b>2013</b>
k	Collection System Field Operations Building	3	\$ 4,000,000	2021
	<b>Subtotal</b>		<b>\$ 15,790,000</b>	
<b><u>2</u></b>	<b>New 2 MGD Capacity Wakarusa WWTP</b>	-		
a	Wastewater Treatment Plant	1, 2	\$ 30,000,000	2013
b	Peak Flow Storage	1, 2	\$ 6,000,000	2013
c	Roads, Utilities	1, 2	\$ 6,000,000	2013
d	New (Wakarusa) PS 5C, 2 - 16" force mains	1, 2	\$ 12,700,000	2013
	<b>Subtotal</b>		<b>\$ 54,700,000</b>	
<b><u>3</u></b>	<b>Kansas River WWTP</b>	-		
a	Nutrient Removal	2	\$ 9,000,000	2023
b	Co-generation & Backup Power	3	\$ 1,000,000	2013
	<b>Subtotal</b>		<b>\$ 10,000,000</b>	
<b><u>4</u></b>	<b>Collection System Rehabilitation Plan</b>	-		
a	Rapid I/I Reduction Program	2, 3	\$ 19,400,000	2013
b	Clay Pipe and Manhole Rehabilitation Program	2, 3	\$ 33,500,000	2013
-	<b>Subtotal</b>		<b>\$ 52,900,000</b>	
	<b>Total</b>		<b>\$ 133,390,000</b>	

\*Parties Best Projection for Start of Design or Construction

\*\* Development Related Growth Projects Are Not Included in CIP

Reason for Improvement

- 1- Growth
- 2 - Regulatory
- 3 - Reliability



**1. Matter:**

EPA's NPDES permit regulations require that each permit include a provision that prohibits "bypass" at 40 CFR 122.41(m). Bypass is defined as the intentional diversion of flow from any portion of a treatment system. Bypasses may be "approved" but not "authorized" subject to conditions prescribed in the regulation, including a showing that there are no feasible alternatives to the bypass.

**2. Significant legal/policy issues: (1) How to implement the decision.**

Current status: EPA has been asked in a letter from Conf of Mayors and others why it does not view Eighth Circuit decision as nationally binding.

**3. Background**

**What is blending?** Under sections 301(b) and 304(d) of the CWA, EPA established secondary treatment standards for publicly owned treatment works ("POTWs") based on biological treatment. Many POTWs lack adequate capacity for treating increased flows that the POTW receives during periods of wet weather. (For this reason, this issue is sometimes called "peak flows.") Excessive flows can overwhelm a POTW, destroying the microorganism used to treat wastewater in the biological part of the treatment process. As a result, many facilities have constructed holding facilities to collect excess flows that can be bled back into the system when flows decline. (This is called "blending.") Others install so-called "side-stream" treatment that provides additional, but not biological, treatment. Excess wastewater is diverted from biological to the side-stream treatment and then blended back into the POTW system before discharge. POTW have argued as long as the ultimate discharge from the pipe meets secondary treatment standards, the diversion should not be considered a bypass.

**What has been EPA's position about legality of blending?**

**3. What did Court Hold?** In *Iowa League*, the Eighth Circuit reviewed two EPA letters regarding different subjects under the Clean Water Act (CWA). The first letter stated EPA's policy view that bacteria mixing zones "should not be permitted" in waters designated for

primary contact recreation. The second letter addressed the issue of blending and the specific question of whether a facility that uses a physical/ chemical treatment process, such as ACTIFLO, to treat flows that are diverted around biological treatment units during wet weather events is subject to a “no feasible alternatives” demonstration under the bypass regulation. The court determined that both letters constituted legislative rules and vacated the letters’ “rules” because they had been promulgated without following notice and comment procedures required under the Administrative Procedure Act (APA).

\_\_\_\_\_, the court also stated that EPA’s statement in the blending letter “severely restricts the use of ‘ACTIFLO systems that do not include a biological component’ because the EPA does not ‘consider[] [them] to be secondary treatment units.’” 711 F.3d at 876. “If a POTW designs a secondary treatment process that routes a portion of the incoming flow through a unit that uses non-biological technology disfavored by EPA, then this will be viewed as a prohibited bypass, regardless of whether the end of pipe output ultimately meets the secondary treatment regulations.” *Id.* The court stated that “the September 2011 letter applies effluent limitations to a facility’s internal secondary treatment processes, rather than at the end of the pipe.” *Id.* Finally, the court stated that “the blending rule clearly exceeds the EPA’s statutory authority and little would be gained by postponing a decision on the merits.” *Id.* at 877.